



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Korrekt Optical

File: B-281800

Date: April 9, 1999

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GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of offeror's past performance is denied where the record shows that the evaluation was reasonable and consistent with the applicable evaluation factors.
2. Selection of technically superior, higher-priced proposal is unobjectionable where the solicitation made technical considerations and past performance more important than price and the agency reasonably concluded that the technical superiority and better past performance record of the awardee warranted payment of the associated price premium.

DECISION

Korrekt Optical protests the award of a contract to Classic Optical Laboratories, Inc. under request for proposals (RFP) No. 583-75-98, issued by the Department of Veterans Affairs (VA) for prescription eyeglasses and services for VA beneficiaries. Korrekt principally contends that the agency improperly evaluated its past performance because the agency relied on negative reference information to which the protester was not provided an adequate opportunity to respond.

We deny the protest.

The solicitation, issued August 12, 1998 as a commercial-item procurement, contemplated the award of a fixed-price contract to provide the necessary resources, facilities, and establishments in each community where either a Veterans Integrated Services Network (VISN) 11 VA Medical Center or Outpatient Clinic is located, in order to furnish prescription eyeglasses to eligible beneficiaries. RFP § A.6.3. The solicitation provided for award to the responsible offeror whose

conforming offer was most advantageous to the government. RFP § C.4. The RFP provided for evaluation of the proposals under the criteria of technical factors, past performance, and price. Id. The technical evaluation criteria consisted of the education of individuals providing supplies and services to VA beneficiaries and the offerors' management capabilities and approach. Id. Under management capabilities, offerors were to describe management methods to ensure the provision of prompt and quality service. Id. Under past performance, the solicitation required offerors to identify all federal, state and local government contracts and private contracts of similar type, size, scope, and complexity that were ongoing, or had been completed within the past 3 years. RFP § C.4.B. The RFP further provided that the information must evidence customer satisfaction with the offeror's products and services, and demonstrate the offeror's compliance with and fulfillment of the requirements under previous contracts. Id.

Three offerors, including Korrekt and Classic, submitted proposals by the September 30, 1998 closing date. One proposal was determined to be technically unacceptable and was not further considered. After performing an initial evaluation, the agency determined that discussions should be held with each of the other two offerors. Under the initial evaluation, Classic's management approach was determined to be better than that of Korrekt, and Korrekt was found not to have provided sufficient information about the education and experience of its employees. The evaluators were also concerned about whether Korrekt's management and capacity would be sufficient to permit Korrekt to satisfactorily handle a large increase in workload. Additionally, the evaluators had concerns with Korrekt's past performance on current/recent contracts with other VA medical centers. In the initial evaluation, Classic's proposal received a score of 34.5 out of 40 for technical, 15.75 out of 20 for past performance, and 25.23 out of 40 for price. Korrekt's proposal received a score of 20 out of 40 for technical, 4.25 out of 20 for past performance, and 40 out of 40 for price. Agency Report, exh. 5.

The contracting officer and the chairman of the technical evaluation team held discussions with both offerors, seeking clarification of various issues, such as past performance, frame selection, and additional dispensing locations. During these discussions, the contracting officer advised Korrekt of the adverse past performance information identified by the evaluation team and requested Korrekt to provide a written response to the adverse past performance matters and to the other issues as well. Agency Report, exh. 1. The protester responded to the agency's concerns by letter dated October 24, 1998. Specifically, Korrekt explained that certain delivery delays at VA medical facilities in Illinois and Virginia were due to continuous frame backorders from certain manufacturers and other delays were due to the size of Korrekt's former facility. Protest, exh. 2. Korrekt's representative pointed out that it had recently moved into a larger facility which allowed both expandability and better production flow. Additionally, the protester stated that delays in a Washington, D.C. hospital were the result of the prosthetic service's inability to provide timely responses to its concerns regarding missing information on

prescription forms. Lastly, Korrekt stated that it did not recall quality problems at the Topeka, Kansas hospital, but that if there had been problems, they must have related to Korrekt's previous production flow problems. Id.

The final evaluation was based on the original proposals, discussions with both offerors and the additional information received from both offerors regarding past performance, personnel background and experience of employees. In the final analysis, the contracting officer determined that after consideration of all the past performance information for both offerors, Classic had the superior overall past performance record. Agency Report, exh. 8. The evaluation team concluded that Classic's education qualifications and experience were "superior/better" to those of Korrekt. Agency Report, exh. 8. The evaluators found that Classic clearly outlined the number of years of experience and education of its staff and justified its capabilities to handle a contract of this magnitude. Classic's management overview was found to articulate its capabilities and approach to the type and size of contract, and its approach was found to be more defined than Korrekt's. Classic was determined to offer a better defined understanding of quality management and its quality assurance plan was found to indicate a defined style of its management. Lastly, Classic offered to provide at least 30 different frame styles for the original price, while Korrekt agreed to provide only 22 at the same price.

In making the award determination, the contracting officer concluded that Classic demonstrated that it offered the better technical capabilities, skills, management, resources and performance potential to provide the best performance at a reasonable price. Agency Report, exh. 8. While the contracting officer recognized that Korrekt's overall price was significantly lower than Classic's, he concluded that Classic's technical superiority, combined with Classic's overall superior past performance record, warranted award to Classic. Id. On November 27, 1998, award was made to Classic.

By letter dated December 1, 1998, Korrekt filed an agency-level protest objecting to the award and contending that its technical proposal and other factors as submitted, when coupled with the price offered, entitled Korrekt to the award. Agency Report, exh. 9. The agency-level protest was denied by letter dated December 21 and Korrekt filed this protest with our Office on December 31, 1998. Korrekt primarily objects to the agency's evaluation of its past performance as improper because Korrekt was not given an opportunity to rebut negative past performance information relied on by the agency and maintains that it did not have significant delivery problems in the performance of past or present contracts.

The evaluation of technical proposals, including the evaluation of past performance, is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3.

In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586 at 3. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

Korrek challenges its past performance evaluation and disputes that there were widespread significant delivery problems on its completed and existing contracts. The contracting officer states that the new format for delivery of glasses being used in this procurement was developed specifically to enable veterans to receive prompt delivery of eyeglasses in order to improve service and customer satisfaction. The contracting officer explains that in order to evaluate the past performance of both offerors, he sent a past performance questionnaire to a number of the past performance references included in each offeror's technical proposal. Agency Report, exh. 1. The contracting officer also obtained data from other VA medical centers on both offerors. Korrek's initial past performance evaluations included a number of instances of unsatisfactory performance which resulted in the contracting officer's further examination of Korrek's past performance. Id. at 4. The additional inquiries into Korrek's past performance history resulted in many satisfactory and above-satisfactory ratings and comments on the various aspects of performance, but also resulted in numerous unsatisfactory ratings and comments. In several instances, Korrek was cited by several VA facilities for problems meeting delivery schedules. Agency Report, exh. 6. There were also several instances where, while Korrek received an overall above-satisfactory evaluation, comments indicated that Korrek had delivery problems in performing the contract. Moreover, Korrek's letter of explanation noted above concedes, rather than disputes, the existence of such problems and attempts to explain the measures it has taken which it believes will ameliorate the performance problems for future contracts. Because the documentation supports the contracting officer's finding that Korrek had a record which included performance problems while Classic's past performance received uniformly favorable ratings, there is no basis to question the agency's lower evaluation of Korrek's proposal under past performance.¹

¹The protester asserts that the agency's actions here constitute "blackballing" or a de facto debarment essentially because it is being penalized for its unproven past performance problems. This allegation is entirely unfounded--it does not set forth any alleged pattern of conduct by the agency and instead appears to be based on Korrek's speculation about possible future actions by the agency. As for the procurement at issue here, the record shows that the agency conducted a reasonable analysis of both offerors' past performance consistent with the stated evaluation criteria and Korrek reasonably was not selected for award because it did (continued...)

Korrek also objects to this evaluation on the basis that it was not given a sufficient opportunity to respond to the adverse past performance evaluation. As explained above, the agency held oral discussions with the offerors and communicated the adverse past performance matters to Korrek and requested Korrek to provide a written response. The adverse past performance issues involved delivery problems in the performance of several contracts at VA medical facilities in Illinois, Virginia, Kansas, and Washington, D.C. Agency Report, exh. 6. As noted above, in fact, by letter dated October 24, 1998, Korrek responded to the agency's concerns about its adverse past performance evaluation, and provided the agency specific explanation for delivery delays at the VA facilities. Protest, exh. 2. Further, the record shows that, contrary to the protester's assertions, at least one of the VA facilities provided Korrek with the opportunity to correct past performance problems. Specifically, the VA Medical Center in Danville, Illinois provided Korrek with specific concerns the agency had with its performance, including delivery delays, and also made several suggestions to enable Korrek to improve its performance. Id. Thus, Korrek was provided with an opportunity to address adverse past performance information, and we therefore have no reason to object to the propriety of the past performance evaluation on this basis.

Korrek also asserts that the agency in its award decision improperly relied too heavily on the past performance evaluation. The agency position is that it properly awarded the contract to Classic on the basis of an appropriate technical/price tradeoff. In a negotiated procurement, agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 9. Where, as here, the RFP indicates that technical considerations are more important than price considerations, selection of a technically superior, higher-priced proposal is proper where the record shows that the price premium was justified in light of the proposal's technical superiority. Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471 at 2. Here, the record supports the contracting officer's decision to award the contract to Classic as the technically superior offeror, notwithstanding Classic's higher proposed price.

After reviewing the proposals submitted by the offerors, the information provided by the offerors' references, as well as the responses provided by the offerors in response to discussion questions, the VA determined that Classic's proposal demonstrated that it had the better technical capabilities, skills, management,

¹(...continued)

not present the best value in part because of the agency's valid assessment of its past performance as weaker than Classic's. This does not constitute "blackballing" or debarment. See JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299 at 9.

resources and performance potential to provide the best performance under the contract. Although Korrect's overall price was lower, the cost savings were outweighed by Classic's demonstrated superiority and by Korrect's weaker proposed management approach and its poorer past performance record. Contrary to Korrect's argument that the agency placed undue emphasis on past performance, the record demonstrates that, in accordance with the solicitation, the agency's determination of the relative merits of the proposals involved consideration of the educational qualifications and experience of the offerors' proposed staff, management capability and approach, past performance, and scope of offered frame selection. Consequently, this record provides no basis to question the reasonableness of the award determination.²

The protest is denied.

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²The protester in its comments submitted in response to the agency report complained that the agency failed to provide any foundation or documentation to support the allegations of poor performance. However, after the agency then produced all of the evaluation documentation, the protester declined to submit any comments, i.e., it failed to dispute and rebut the agency's rationale, which is not otherwise called into question by the record.